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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,792

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Mark E. Maresh

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EXAMINER

JOHNSON, JERROLD D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,792

Applicant(s)

MARESH ET AL.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 refers to a component set forth in claim 2. There is no such component in claim 2.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4-10,12,14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Newsome US 2,160,893.

Re claim 1, Newsom discloses in Fig. 4 a packaging assembly having an outer sidewall(s) 19, 21 having an upper rim having an upper rim perimeter, a lower rim having a lower rim perimeter, a plurality of arcuate coves 29 and at least a plurality of stress absorbing seams (the edge separating each cove from the outer sidewalls 19, 21) situated on said proximal side, a plurality of arcuate coves and at least a plurality of stress absorbing seams situated on said distal side, and, a lower assembly floor having a plurality of arched base pedestals (the bottom convex side of convex domes 27) on said proximal side, a plurality of arched base pedestals on said distal side, an elevated

Art Unit: 3728

receiving bed 34 for providing added stiffness to said lower assembly floor, a concave dome 27 having a dome perimeter, an outer floor edge having an outer floor perimeter, wherein said lower rim is configured with said outer floor edge such that said lower rim perimeter is equal to said outer floor perimeter.

Re claim 2, note col. 2, lines 55 and 56.

Re claim 4, note the size of the domes.

Re claim 5, note the slope of the sidewalls 19, 21.

Re claim 6, note that the convex domes 27 are one of two types of domes disclosed. Elements 29 (having a flat top 32) are also domes and have a concave bottom side and a convex top side. These domes have at their bottoms a non-circular perimeter because of the intersection of the elevated receiving bed 34 with the domes.

Re claim 7, note the symmetry of the assembly.

Re claim 8, note there are many stress absorbing seams on each side, so therefore there are two. The claim does not read "only two."

Re claim 9, see the rejection of claim 8.

Re claim 10, see the rejection of claim 8.

Re claims 12,14 and 16-20, note the rejections of claims 1-10 above.

Additionally note that an egg meets the claim limitation of a "component" and that the complex geometry of Newsom could be described as a "butterfly" geometry per claims 19 and 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newsom in view of Examiner Official Notice.

Newsome does not disclose that his pulp-based composition is primarily newsprint, nor does Newsome explicitly disclose printed matter (instructions)

Printed matter is so well known in egg containers, and accordingly, it would have been obvious to one of ordinary skill in the art to include printed matter on the assembly of Newsom.

The use of recycled newsprint in molded pulp products (like Newsome) is well known. Pregont US 5,230,943 and Boeri US 5,151,312 are two references that disclose this concept and are herein set forth as extrinsic evidence in support of the Examiner's Official Notice. The benefits of using a recycled material are self-evident.

Accordingly, it would have been obvious to one of ordinary skill in the art to utilize recycled newsprint in the pulp based composition of Newsome for the benefits that are known to be provided by the use of recycled materials.

Allowable Subject Matter

As was set forth to Mr. Scott Reid telephonically on 25 September 2006, the claim elements set forth in the claims are set forth with little or no structure, and little or no relationship to other claim elements. Accordingly, the claims are much broader than first blush. Amending the claims so as to define over Newsom, and the other prior art of record will require only a small amount of additional detail to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mickey Yu
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Group 3700